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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE) DOCKET NO. E-01933A-15-0100
APPLICATION OF TUCSON)
ELECTRIC POWER COMPANY)
FOR APPROVAL OF A NEW NET-)
METERING TARIFF FOR FUTURE) THE ALLIANCE FOR SOLAR
NET METERED CUSTOMERS AND) CHOICE'S REPLY BRIEF
A PARTIAL WAIVER OF THE)
COMMISSION'S NET METERING)
RULES.)

The Alliance for Solar Choice ("TASC") hereby submits its Reply Brief in opposition to the Application in the above captioned matter. TASC has reviewed the Initial Briefs filed by the Intervenors in this docket and remains convinced that not only should TEP's Application be heard in a rate case, it *must* be heard there. In the following sections, TASC replies to the various arguments raised in the Initial Briefs.

I. TEP Could Have Made This Proposal In Its Last Rate Case But Chose The LFCR Option Instead

During the May 18, 2015, oral argument on Trico's pending Application in Docket No. 15-0057, TEP's attorney alleged that, even though the discussion surrounding the impact of DG was front

1 and center at the Commission during TEP's last rate case, TEP somehow could not have asked in
2 that forum for the relief it now seeks. TEP's curious explanation is that because TEP used a 2011
3 test year in the rate case, a year with a slower solar installation rate than today, TEP could not have
4 sought an end to net metering and a different buyback rate for exported power in the rate case
5 proceeding.

6
7 But this is no explanation at all, as the pace of solar deployment during the test year in TEP's last
8 rate case is irrelevant as when TEP could have proposed to eliminate net metering and replace it
9 with an alternative. TEP asserts that DG solar creates a cost shift that grows with each installation
10 – an assertion not dependent on the pace of solar adoption (and one with which TASC disagrees).
11 As explained in TASC's Initial Brief¹, during TEP's rate case in late 2012 and throughout 2013,
12 APS was actively pushing this exact same theory, yet TEP continued to assure everyone that the
13 LFCR was the solution it wanted.

14
15 As explained in AriSEIA's Initial Brief,² TEP was not the only proponent of the LFCR as the
16 solution to the alleged DG-caused revenue reduction issue. Many other parties agreed and together
17 with TEP executed a Settlement Agreement commemorating that understanding. And yet, TEP
18 would have the Commission accept that while everyone was concerned with the alleged problem,
19 no one intended the solution they arrived at to actually solve the problem. That is just not plausible.

20
21 It is irrefutable that this issue was squarely before the Commission in TEP's last rate case. TEP
22 proposed the LFCR as the solution to the exact same issue to which it now proposes another
23 solution. TEP could have, but chose not to, pursue this solution in its last rate case. TEP should
24 not be permitted to now claim that the issue remains unaddressed and needs to be dealt with, yet
25 again, outside a rate case.

26 27 **II. The Application Is Not A Formulaic Recalculation Of An Existing Adjuster**

28 ¹ See TASC's Initial Brief at 9-10.

² See AriSEIA's Combined Motion at 2.

1
2 TEP relies on flawed arguments to support its claims that the Commission can deal with this issue
3 in this docket. TEP argues that the current Net Metering Tariff was instituted outside of a rate
4 case, points out that there exist some unrelated yet otherwise legal adjuster mechanisms, and so
5 concludes that its Application should be heard outside a rate case. These arguments ask the
6 Commission to ignore what TEP is actually asking. TEP's logic goes like this: Since the
7 Commission allows adjuster mechanisms to adjust all the time, and the Commission adopted the
8 NEM tariff outside of a rate case, therefore, because TEP is merely seeking an adjustment to a
9 mechanism created outside of a rate case, the Commission can grant the relief this Application
10 seeks outside a rate case.

11
12 The problem is that TEP is grossly mischaracterizing what it is actually seeking. TEP is not asking
13 the Commission to adjust an already-existing mechanism -- it is asking the Commission to ignore
14 an existing mechanism, by disregarding the existing Net Metering Rules, the utility's NEM Tariff,
15 and the LFCR, and instead to conclude that DG solar should be subject to an entirely different
16 treatment that has never been subject to Commission review in a ratemaking or rulemaking
17 procedure.

18
19 It is just not true that TEP's proposal to ditch the one-for-one retail credit aspect of NEM (its core
20 component) is the functional equivalent of simply adjusting the MCCCCG rate, or making an annual
21 adjustment to the LFCR using a method clearly set out in a rate case. To the contrary, TEP is
22 seeking to waive rules and eliminate the existing mechanism. It is, at best, disingenuous for TEP
23 to characterize its request to eliminate net metering as a mere adjustment.

24
25 In support of its position, TEP offers references to a series of easily distinguished or entirely
26 inapposite ACC Decisions.

- 1 • TEP's reliance on the Commission's establishment of a rolling average Purchased Gas
2 Adjuster mechanism in Decision 61225 is misplaced. The Decision did not arbitrarily
3 create a new sub-class of customers and charge them more than other customers for the
4 same service as TEP seeks to do here. Instead, it merely took fluctuating gas prices
5 and smoothed them out resulting in a banded average billed in consistent amounts with
6 no overall increase to any customers.³
7
- 8 • Decision 66512 similarly does not support TEP's position. TEP is correct that water
9 hookup fees were approved in that Decision⁴ but the Commission based its decision on
10 a specific finding that the fees were treated as CIAC and would not impact revenue,⁵
11 something TEP cannot claim here. Further, setting standard hookup fees is
12 substantially and meaningfully different than raising the charge for existing services.
13
- 14 • TEP misapplies Decision 61973 which established the provision of entirely new
15 services from the utility. The Commission perfectly summed up the difference between
16 Decision 61973 and TEP's current request when it wrote, "[a]ccording to Staff, this
17 case is not about changing existing rates, but instead involves the introduction of a new
18 service – direct access."⁶ The case at hand is about raising the price for an existing
19 service and Decision 61973 is irrelevant.
20
- 21 • TEP urges the Commission to rely on Decision 61104 as an example of the
22 Commission acting outside a rate case.⁷ TEP ignores that the rate case prior to Decision
23 61104 authorized TEP to seek changes "[] for sharing of benefits with customers of
24 cost containment efforts where appropriate []" prior to its next rate case.⁸ This
25

26 ³ See Decision 61225.

27 ⁴ See TEP Initial Brief at 4:8.

28 ⁵ See Decision 66512 at 4:25-26.

⁶ Decision 61973 at 5:19-20.

⁷ See TEP Initial Brief at 4:8-9.

⁸ Decision 61104 at 1:22.

1 Decision implemented a reduction in rate base and offers no guidance with regard to
2 TEP's current proposal to raise rates on new DG customers.

- 3
- 4 • TEP cites Decision 65751 for the proposition that the Commission has approved new
5 tariffs outside a rate case.⁹ The tariffs approved in Decision 65751 did not require
6 anyone to take service under them and were approved only as "experimental"¹⁰ at a
7 time when TEP had 30 DG customers¹¹ and can hardly be deemed precedential to the
8 case at hand.
 - 9 • Finally, TEP totally mischaracterizes Decision 68954 by alleging it is an example of
10 the Commission creating a new street lighting tariff outside a rate case.¹² In that
11 Decision the Commission merely decided that to resolve customer confusion, street
12 lighting customers would all take service under a different yet already existing tariff.
13 No new tariff was created. In this case, TEP is proposing to create an entirely new
14 tariff (TEP calls it a "modification") and force future customers onto that tariff.
15 Decision 68954 simply does not do what TEP says it does.
- 16

17

18 **III. TEP's Application Absolutely Affects Rates Charged To All New Solar Customers**

19

20 In its Brief, TEP makes the erroneous claim that "the proposed charges will not affect any rate or
21 charge imposed on TEP's customers and therefore may be considered outside a rate case."¹³ Yet
22 under TEP's proposal, all new solar customers will pay more per month than will similarly-situated
23 established solar customers. This is an Application that unquestionably will "affect" rates or
24 charges imposed on TEP customers.

25

26 ⁹ TEP Initial Brief at 4:8-9

27 ¹⁰ See Decision 65751 at 14:19-20.

28 ¹¹ See Id. at 12:7.

¹² See TEP Initial Brief at 4:9.

¹³ TEP Initial Brief at 4:2-3.

1 TEP plays semantics, contending that “TEP is not proposing an additional charge; rather it is
2 proposing a reduced credit [] that will have no impact on TEP’s fair value and will not increase
3 TEP’s rate of return above what was approved in its last rate case.”¹⁴ Under this convoluted
4 formulation, for example, it would be appropriate for TEP to propose outside of a rate case to get
5 rid of all credits granted to low-income customers – even though that proposal would raise those
6 customers’ rates to unaffordable levels and flood TEP’s coffers with additional revenue, by TEP’s
7 logic that proposal would not “raise a fee or charge” but merely lower a credit. Similarly, could
8 TEP stop crediting ratepayers for the benefit of the federal investment tax credit on renewable
9 investments and take the credit for its own benefit instead, while arguing that the result is not
10 raising rates but rather “a reduced credit?” Obviously, such semantics would not justify TEP’s
11 claim in those examples that its proposals would not “affect rates or charges,” and such semantics
12 must be rejected here as well.

13
14 This argument is not new. When, during its previous net metering docket, APS proposed a
15 somewhat similar formulation known as the “Bill Credit Option” where energy would be credited
16 to solar customers at something less than the retail rate, Staff rightly concluded that “[] the Bill
17 Credit Option is not revenue-neutral and APS again offers no guidance on how additional revenues
18 produced under this Option would be returned to non-DG ratepayers.”¹⁵ Similarly, TEP fails to
19 address the reallocation of its would-be increased revenue and does not offer an adequate
20 explanation of how this increase recovery is possibly revenue neutral.

21 22 **IV. The Public Interest Is Served By Reviewing TEP’s Application In The Proper** 23 **Venue: A Rate Case**

24
25 In its Initial Brief, TEP outlines three reasons that it claims the public interest supports reviewing
26 its Application now, outside of a rate case. Each of these reasons, as explained below, actually
27 favors adjudication in a rate case, and not in this docket.

28 ¹⁴ Id. at 4:10-12.

¹⁵ Staff’s Open Meeting Memorandum, September 30, 2013, Docket No. E-01345A-13-0248 at 6.

1 **A. TEP's Application will lead to double litigation resulting in increased costs**
2 **and inefficiency**
3

4 TEP wrongly alleges that it is more efficient to deal with this issue both now and then again in its
5 next rate case. TEP entirely ignores the millions of dollars that will be spent by a combination of
6 Arizona taxpayers (through RUCO and ACC Staff time), the ratepayers of the several intervening
7 utilities, and the other intervenors litigating this issue in this docket and then again in the rate case.
8 In fact, in making its efficiency argument, TEP admits that its sought solution will not, in its
9 opinion, "completely address" the issue at hand.¹⁶ The reason, of course, is because the problem
10 that the utility is suffering is a rate design issue that can only be addressed in a rate case. How
11 efficient is it to litigate a case when the Applicant acknowledges that even if it gets what it wants,
12 the issue must be dealt with again in the next rate case? This is the definition of inefficiency.

13
14 In support of this argument, TEP also alleges that its rate payers must "not be required to incur the
15 significant expense of a rate case at this time when the lost revenue and related cost shift can be
16 mitigated in this docket."¹⁷ This argument must be rejected for at least two reasons: 1) TEP was
17 free to bring this proposed remedy forward in its last rate case and willingly chose not to do so.
18 As a result, if TEP believes it has to have this remedy now but cannot explain why it failed to raise
19 it in its last rate case, it is likely that TEP's shareholders, not its ratepayers, should be on the hook
20 for any rate case expenses incurred; and 2) no one is forcing TEP to bring a rate case at all; rather
21 TASC (and Staff, ASDA, SEIA, AriSEIA, and others) is merely pointing out that the issue TEP is
22 trying to resolve in this docket must only be dealt with in a rate case. If TEP has a significant
23 revenue recovery issue, no matter the cause, it is always free to bring a rate case. However, the
24 record suggests that Arizona utilities are not actually suffering revenue recovery problems. In fact,
25 APS recently successfully pushed for an extension of its time to file its rate case¹⁸ despite
26
27

28 ¹⁶ TEP Initial Brief at 5:12

¹⁷ TEP Initial Brief at 6:2-3

¹⁸ See Decision 74702 removing requirement that APS file its rate case in 2015.

1 continuing to claim a revenue issue from solar. If there was a true revenue recovery issue, one
2 would expect Arizona's utilities to be accelerating their next rate cases, not working to delay them.

3
4 **B. TEP's Application is not an example of gradualism**

5
6 TEP continues to call its Application and example of gradualism without any basis. In reality,
7 TEP is working to significantly diminish the value of DG in this Application. It is eliminating net
8 metering and replacing it with a system that provides relative compensation for exported energy
9 at a rate that is roughly 70% below today's value under net metering. This means that for the solar
10 customer exporting to the grid 45% of the power she generates, that customer can expect to see
11 her electric rates increase well above \$20/month if she signs up after TEP's proposal is adopted.
12 An immediate \$20/month bill increase could easily signal a jump in the customer's overall utility
13 costs of 25%-50%, depending on the customer. In no world is this gradualism.

14
15 **C. TEP's Application could only be argued to be less "confusing" outside a**
16 **rate case because all the relevant data points will not be able to be reviewed**
17 **and only limited solutions will be permitted.**

18
19 TEP claims that this issue should be dealt with now because "rate cases are complicated dockets,"¹⁹
20 as if that justifies such a result. If TEP believes its rate cases are too complicated for its customers
21 to participate in, then maybe it should work to simplify that process.

22
23 More importantly, the issue of revising rate design is an important one that has cascading effects
24 throughout TEP's rate-making process. TEP wanting to avoid the full investigation by labeling it
25 "too complicated" does not make the full investigation any less essential. As demonstrated in
26 TASC's Initial Brief, issues of return on equity can be directly impacted by revenue mitigation
27 devices such as that proposed in the Application. TEP is correct that analyzing ROE is more

28

19 TEP Initial Brief at 6:12.

1 complicated than not analyzing it, but such an investigation is essential to accurately setting rates.
2 Just because something may be difficult does not mean it can be jettisoned at will.

3
4 Further, TEP has proposed a single solution to the problem it alleges --a solution it actually claims
5 does not even solve the problem it is complaining of. In a rate case, the Commission would be
6 able to consider a host of broad-based or uniquely tailored rate design solutions. Do not forget, as
7 pointed out in TASC's Initial Brief, UNS Electric, TEP's sister company, has alleged that a full
8 70% of its ratepayers do not cover their cost of service. This is a major issue and one that should
9 be dealt with in a rate case.

10 11 **V. RUCO Is Concerned With A Non-Existent Cost Shift**

12
13 As TASC has explained on numerous occasions, there is no cost shift of the type RUCO alleges,
14 which is why RUCO's position in favor of raising rates on a new arbitrarily created sub-class of
15 residential ratepayers right now is so puzzling. RUCO repeats the false assertion that "as the
16 number of solar sales continue to grow the cost shift to non-solar customers continues to
17 increase."²⁰ Even if one took everything that TEP alleges as true, there would still be no
18 mechanism in place that would allow TEP to recover, in its next rate case, for any unrecovered
19 lost revenue it may incur between rate cases as a result of the implementation of DG. Again, even
20 if the cost shift allegations were true --and TASC denies that they are-- the lost revenue that the
21 company would incur between rate cases would never be passed onto other ratepayers as increased
22 costs; it would simply be lost. To contend otherwise is to ignore that utilities are not made whole
23 for lost sales that arise from a cooler summer or other changes in usage patterns resulting in fewer
24 kWhs sold between rate cases. That is not how rates work.²¹

25
26
27 ²⁰ Id. at 4:5-8

28 ²¹ TEP even agrees with this and offered testimony in its last rate case confirming that any lost revenue resulting from DG implementation between rate cases is "lost forever" and not recouped in a rate case. See, July 2, 2012 Testimony of Craig A. Jones, TEP Manager of Pricing, at 61:2-7.

1 It appears that RUCO's entire opinion is based on its mistaken belief that acting now will somehow
2 benefit ratepayers. However, any excess money taken in under the proposal is not reallocated to
3 ratepayers in any way. It only helps TEP's shareholders make more money, while having no
4 impact on non-DG customers. Further, to the extent this alleged cost shift is an issue that needs to
5 be addressed going forward from the next rate case, that issue is exactly the same in the next rate
6 case, no matter how much TEP charges solar customers today.

7
8 This is an important point that undermines TEP and RUCO's position entirely. No matter how
9 much more or how much less TEP collects from DG customers between now and the conclusion
10 of its next rate case, that amount will have no impact on the setting of rates for any customers in
11 the next rate case. If TEP believes that the presence of a certain number of DG customers on its
12 grid creates a cost shift that must be dealt with in its next rate case, it will make no difference how
13 much a DG customer pays today.

14
15 RUCO demonstrates further confusion when it writes that, "RUCO is concerned that if the
16 Commission defers until TEP's next rate case to decide this issue, the cost shift will be so great
17 that the potential impact on new solar customers to address the cost shift could be cost
18 prohibitive."²² This concern does not make sense to TASC. First, if the Commission were to
19 conclude in TEP's next rate case that DG customers cause an annual cost shift (again, a notion that
20 TASC adamantly disagrees with), the amount of the shift per DG customer would not be different
21 merely because the Commission comes to this conclusion at a later date. TEP argues that
22 individual DG solar customers are somehow avoiding, and should be made to cover, their cost of
23 service. The cost to serve a DG customer does not grow greater with every passing day as RUCO's
24 concern suggests nor is the utility openly asking that DG solar customers be made to pay more
25 than their cost of service.

26
27
28

22 RUCO Initial Brief at 4:2-4.

1 Second, while TASC welcomes RUCO's concern that fees placed on new solar customers in a rate
2 case might be cost prohibitive to those wanting to adopt solar, TASC wishes RUCO expressed that
3 same level of concern for the cost prohibitive fees proposed in this docket.

4
5 Based on the forgoing, it is startling to see RUCO advocating for speedy implementation of higher
6 rates for a certain artificial subset of residential ratepayers when the higher rates have no impact
7 on the level at which rates are set in the next rate case and have absolutely no benefit to any other
8 ratepayers either now or in the future. In its purest form, RUCO --the ratepayer advocate-- is
9 advocating for an immediate rate hike on an artificial subset of its constituents while that hike
10 bestows no benefit upon any other ratepayers whatsoever.

11 12 **VI. RUCO Is Mistaken; This Application Is Not Revenue Neutral**

13
14 In RUCO's Initial Brief, it posits that, "[a] revenue neutral proposal which has the effect of simply
15 shifting costs within a residential rate class would not violate fair value."²³ RUCO seems to be
16 arguing for an Application that is different from what TEP is proposing. TEP's proposal does not
17 seek to reallocate the additional income to any other ratepayers. It is increased revenue to TEP,
18 full stop, and cannot be construed as revenue neutral.

19 20 **VII. TEP's Claims With Regard To Increasing Pace Of Solar Deployment Are** 21 **Disingenuous**

22
23 TEP intentionally fails to give the Commission essential context when it characterizes the rapid
24 increase in applications for solar within its service territory. TEP expresses surprise that, since its
25 Application, it has "received more than 660 additional applications [for DG]." TEP's Application
26 included a cutoff day that announced to its customers that if they want solar, they need to move
27 now before it becomes utterly unaffordable after June 1, 2015. No one forced TEP to include a

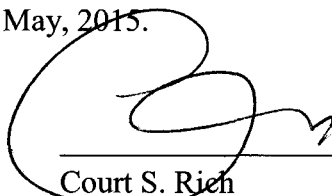
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23 RUCO Initial Brief at 2:21-22.

1 retroactive cutoff date in its Application (and TASC contends that doing so is illegal and improper
2 anyway), but TEP should at least be transparent that the situation is of its own making.
3

4 Not only does TEP fail to acknowledge the effect of its announcement but in an attempt to frighten
5 the Commission, it attempts to extrapolate that the current application pace will continue for all of
6 2015. This is facetious: TEP cannot reasonably expect that the current pace will continue after the
7 cutoff date is triggered on June 1. TEP's choice to resort to scare tactics is telling.
8

9 Respectfully submitted this 29th day of May, 2015.

10 
11 _____

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